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FILED
APR 28 1999

No. 98-1498

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

NAUMAN S. SCOTT, U.S. DISTRICT JUDGE,

Petitioner,

v.

MICHAEL P. TONE, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION FOR RESPONDENT ROBERT B. BIECK, JR.

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PARTIES TO THE PROCEEDING

A respondent in this case is attorney Robert B. Bieck, Jr. The other parties to the proceeding in the court of appeals were:

Larry D. Crowe (deceased)
Estate of Larry D. Crowe
Sue Ellen Crowe Silman
Succession of Reba Coody Crowe
Michael P. Tone
Anne Fiedler
James W. Berry
W. Glenn Burns
William E. Wright, Jr.
Judy L. Burnthorn
American Casualty Company of Reading, Pennsylvania (CNA)
Judge Nauman S. Scott

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STATEMENT OF THE CASE

The Petition for a Writ of Certiorari filed by Joseph R. Ward, Jr. for United States District Judge Nauman S. Scott is related to four other writ petitions presently pending before this Court.[1]

Each of the other petitioners is an attorney who was sanctioned by Judge Scott. Although the United States Court of Appeals for the Fifth Circuit reversed the sanctions, except as to Berry, and remanded the case, Judge Scott continues to argue for the imposition and enforcement of his sanctions under his expansive, almost limitless view of the inherent powers of federal district judges.

Joseph R. Ward, Jr. was private counsel for the plaintiffs in the underlying civil RICO case, filed and prosecuted a private sanctions motion on behalf of plaintiffs, was appointed as investigator for and counsel to Judge Scott in connection with the post-trial sanctions proceedings, engaged in extensive secret *ex parte* communications with Judge Scott prior to the sanctions trial, acted as prosecutor also of the Court's separate sanctions motions, and was allowed to testify as the chief adverse witness at the sanctions trial and then cross-examine the witnesses who contradicted his testimony.

Respondent, Robert B. Bieck, Jr. ("Bieck"), has petitioned separately for a writ of certiorari to address and correct the glaring due process violations below and the failures of the district court and the court of appeals to enforce the federal disqualification statute. *See* No. 98-1469.

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1. Nos.: 98-1465 — Wright; 98-1468 — Berry; 98-1469 — Bieck; 98-1470 — Burns.

Bieck withdraws the waiver form previously filed with the Clerk and opposes the Petition for a Writ of Certiorari filed by Judge Scott for the following reasons.

A. Judge Scott's Petition Should Be Dismissed For Want Of Jurisdiction.

This Court held in *United States v. Providence Journal Co.*, 485 U.S. 693 (1988), that a writ of certiorari must be dismissed for lack of jurisdiction if the petition for certiorari is filed by a special prosecutor on behalf of a federal district judge without the authorization of the Solicitor General.

In the case *sub judice*, the Solicitor General wrote to counsel for Judge Scott on April 14, 1999 (a copy of the letter was sent to William K. Suter, Clerk), pointing out that the exclusive authority conferred by 28 U.S.C. Section 518(a) to conduct and argue cases in the Supreme Court on behalf of federal government entities lies with the Solicitor General, and that "Judge Scott has neither sought or received such authorization." The Solicitor General expressly invoked the rule of *Providence Journal*. Nevertheless, the Solicitor General's letter concludes, ". . . Judge Scott has determined to proceed in having the Supreme Court consider the petition for certiorari in this case."

Based upon Section 518(a), the rule of *Providence Journal*, and the fact that the Solicitor General expressly has not authorized Judge Scott to file a petition for a writ of certiorari through a special prosecutor, the Petition for a Writ of Certiorari filed by Joseph R. Ward, Jr. on behalf of Judge Scott should be dismissed for want of jurisdiction.

B. Judge Scott's Petition Should Be Denied Insofar As It Seeks To Reinstate Sanctions Against Robert B. Bieck, Jr.

Bieck adopts and incorporates herein the Brief in Opposition for Respondent W. Glenn Burns. The arguments in Burns' opposition brief apply equally to Bieck. The record exonerates Bieck from any suggestion of sanctionable conduct at any time, including the July 11, 1994 meeting, and based upon Ward's testimony, the Fifth Circuit should have reversed and rendered judgment dismissing Bieck outright rather than remanding the case to Judge Scott.

Misstatements in Judge Scott's petition assert his conclusions from his own reasons below, not facts. For example, Bieck was not aware of or involved in any "scheme" and did not "bury" American Casualty's name in the list of persons released in the written settlement agreement. In addition, there was only one written settlement agreement given to Joseph Ward, which he took overnight to read and discuss with his clients prior to signing, and therefore, there was no "addition" to the written settlement agreement as Judge Scott and Ward argue should have been "flagged" by someone. American Casualty's name was listed in the written agreement with the other named insurers of the settling defendants, a fact which the Fifth Circuit clearly considered when ruling that

> Ward's concurrent representation of the Crowes, who retained substantial possibilities for private recovery against the defendants, coupled with his own potential malpractice liability for the events at issue, combine to belie any contention that he was "as disinterested as a public prosecutor."

(Petition of Scott, J., App. 19). Yet, Ward continues to prosecute for Judge Scott, who continues to attempt to resurrect his reversed judgment. Bieck's Supplemental Brief for Petitioner (No. 98-1469) addresses additional misstatements made in the Judge's petition which are noted pursuant to Supreme Court Rule 15.2.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari filed by Joseph R. Ward, Jr. for United States District Judge Nauman S. Scott should be dismissed.

Respectfully submitted,

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